IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 428 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

NICOBAR INVESTMENT PVT.LTD.

Appearance:

1. INCOME TAX REFERENCE No. 428 of 1992

MR MANISH R BHATT for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 26/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue under Section 256(1) of the Income-tax Act, 1961, the following question of law has been referred for our

opinion for the assessment year 1983-84 :-

"Whether, the Appellate Tribunal is right in law and on facts deleting the addition of Rs.2,39,671/- being interest on bonds received on accrual basis ?"

2. We have heard Mr Manish R Bhatt, learned standing counsel for the revenue. Mr RK Patel, learned counsel appears and states that he has instructions to appear for the respondent-assessee and undertakes to file vakalatnama within two weeks from today.

3. The Income-tax Officer made addition of Rs.2,39,671/- by way of interest on 11% redeemable bonds of A.S.E. The Commissioner of Income-tax (Appeals) observed that these bonds, which earned the interest only on annual basis, were sold by the assessee on 13.2.82. The interest fell due on the same on 1.7.1982. The Company which bought these bonds viz. M/s Kaushalya Investment Pvt. Ltd. had duly shown in its return the interest due on these bonds for the entire year ending on 1.7.1982. The Commissioner of Income-tax (Appeals), therefore, deleted the said addition. The Tribunal confirmed the decision of the Commissioner of Income-tax (Appeals) following its decision in Shilpi Advertising Ltd.

4. At the hearing of this reference, our attention is invited to the decision dated 10.7.2002 of this Court in CIT vs. Sabarmati Investment Pvt. Ltd. (Income-tax Reference No.110 of 1990) wherein the same controversy was raised and this Court held that when the interest on bonds is payable on year to year basis, there cannot be any deemed accrual of interest for a part of the year during which the debentures are held by the transferor without getting interest, when the transferee has received the interest for the entire year and has also paid tax on such interest. Accordingly, the question was answered in favour of the assessee and against the revenue. Following the said decision, this Court answered a similar question in CIT vs. Shilpi Advertising Pvt. Ltd. (Income-tax Reference No.117 of 1991) in favour of the assessee and against the revenue.

5. Since the controversy raised in the present reference is squarely covered by the aforesaid decisions of this Court, we answer the question referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-